

**FARMERS' MARKET CONTRACT
FOR WASHINGTON STATE
WIC FARMERS' MARKET NUTRITION PROGRAM &
SENIOR FARMERS' MARKET NUTRITION PROGRAM**

THIS AGREEMENT is made by and between the Washington State Department of Health (Department) and the following:

Contractor Name: _____

Contractor
Address: _____

City State Zip

E-Mail: _____

Phone: _____
Day Evening Cell

Total Number of Markets: _____

THE FOLLOWING MARKETS ARE SUBJECT TO THIS CONTRACT:

Market Name: _____

Physical Location: _____

City State Zip

Day/Hours of Operation	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

If more than one, market location, please indicate number of markets and complete additional market information on next page. Make a copy of the following page in case you have more than four markets.

CONTRACT NO.

Market Name: _____

Physical Location: _____

City State Zip

Day/Hours of Operation	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

Market Name: _____

Physical Location: _____

City State Zip

Day/Hours of Operation	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

Market Name: _____

Physical Location: _____

City State Zip

Day/Hours of Operation	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

Department Contact: S/FMNP Contracts Coordinator
PO Box 47886
Olympia, WA 98504
1-800-841-1410

BACKGROUND

The purpose of the United States Department of Agriculture Food and Nutrition Service (USDA-FNS) Farmers' Market Nutrition Programs is to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs from farmers' markets and farm stores to women and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC FMNP), and to low income seniors through the Senior Farmers' Market Nutrition Program (SFMNP). The purpose is also to expand the awareness, use of and sales at farmers' markets and farm stores.

This contract, which is for authorizing a Farmers' Market to participate in FMNP, is pursuant to Revised Code of Washington (RCW) 43.70.700, which authorizes the Department to participate in WIC FMNP and the general authority of the Washington Department of Social and Health Services (DSHS) to serve older adults and administer the SFMNP in compliance with 7 CFR § 249.

Department administers the WIC FMNP and DSHS administers SFMNP. Under an Interagency Agreement, Contract Number N17727-3 (IAA), Department conducts the contracting, monitoring, and training activities for markets and growers for both programs. DSHS retains responsibility for distribution and reimbursement of SFMNP checks. DSHS will work through Department if DSHS discovers a SFMNP violation or requires anything from a grower or market for the purposes of the SFMNP program. Department and DSHS intend that Department is fully responsible for administration of authorized market and authorized grower contracts for both WIC FMNP and SFMNP. Department will administer all grower or market violations and appeals, regardless of whether the violation arises under WIC FMNP or SFMNP.

THEREFORE, the Parties agree as follows:

1. **PERIOD OF PERFORMANCE:** The period of performance is from the date of execution, and expires midnight December 31, 2014, unless sooner terminated as provided for by this contract. Neither Party has an obligation to renew this contract or enter into a new contract for the same purpose.
2. **DEFINITIONS.** Any term not defined in the following has the meaning defined by 7 CFR § 248, 7 CFR § 249 or Chapter 246-780 WAC. If not specifically defined, the term has its ordinary meaning.

“Authorized,” “authorization,” “Authorized farm store,” “Authorized farmers’ market,” and **“Authorized Grower”** means the same as defined in WAC 246-780-010, that the entity has signed a contract with the Department allowing the entity to participate in FMNP. The Department has assigned an identification number to a properly authorized entity.

“CFR” means the Code of Federal Regulations

“Contract” means this agreement.

“Contractor” means the association, organization, or individual that entered into this Contract.

“Cut herbs” means fresh herbs with no medicinal value that are not potted.

“Department” means the Department of Health.

“Disqualification” means the same as defined in WAC 246-780-010; the Department has terminated an authorization and the authorized entity is not eligible to participate in FMNP. Disqualification may be for a specific period of time.

“DSHS” means the Department of Social and Health Services.

“Eligible foods” means locally grown, unprocessed (except for washing), fresh fruits, vegetables, and cut herbs. “Eligible foods” has the same meaning as “eligible foods” under 7 CFR §§ 248.2 and 249.2, provided that locally produced honey is an eligible food only for SFMNP customers. “Eligible foods” has the same meaning as defined in WAC 246-780-010.

“Employee” means any person who operates under the direction of the market or a grower, regardless of whether the person receives compensation.

“Farm Store” means a location at the site of agricultural production which is owned, leased, rented or sharecropped, and operated by a grower, and where the grower sells produce directly to consumers; similar to the definition in WAC 246-780-010 for “authorized farm store.” For the purposes of 7 CFR §§ 248 and 249, a “farm store” is a type of “roadside stand.”

“Farmers’ Market” means the same as defined in 7 CFR §§ 248.2 and 249.2, as modified by WAC 246-780-010, which is an assembly of five or more authorized growers at a defined location who have the purpose of selling their produce directly to consumers.

“S/FMNP” is a collective term meaning both the WIC FMNP and the SFMNP. This Contract will use WIC FMNP or SFMNP to indicate where a provision applies to only one of the programs.

“S/FMNP Check” is a collective term meaning the financial instruments distributed by local agencies to persons eligible for benefits under both the WIC FMNP and the SFMNP and which the benefitted persons may exchange for eligible foods. “S/FMNP Check” has the same meaning as “coupon” under 7 CFR §§ 248 and 249 and the same meaning as “Check” under WAC 246-780-010(6). This Contract will use WIC FMNP Check or SFMNP Check to indicate where a provision applies to only one of the programs.

“S/FMNP customer” is a collective term meaning any person who is eligible for and has been issued an S/FMNP check under either the WIC FMNP or the SFMNP. This Contract will use WIC FMNP customer or SFMNP customer to indicate where a provision applies to only one of the programs.

“Grower” means an individual who grows a portion of the produce that he/she sells at a farmers’ market or farm store. “Grower” has the same meaning as “farmer” under 7 CFR §§ 248 and 249.

“Locally grown” means the same as defined in WAC 246-780-010.

“Market” means all markets subject to this agreement, which are listed in the opening paragraphs of the contract.

“Market manager” means the same as defined in WAC 246-780-010; an individual designated by farmers’ market management, or board members, who is responsible for overseeing the market and authorized growers’ participation in the FMNP.

“SFMNP” means the Senior Farmers’ Market Nutrition Program administered by the Department of Social and Health Services.

“Validating” means stamping S/FMNP checks in the designated box with appropriate identification numbers.

“WAC” means the Washington Administrative Code.

“WIC” means the federally funded Special Supplemental Nutrition Program for Women, Infants, and Children.

“WIC FMNP” means the WIC Farmers’ Market Nutrition Program administered by the Department of Health.

3. **PROGRAM REQUIREMENTS.** The Contractor shall comply fully, and ensure the market complies fully, throughout the contract period, with the following program requirements:
 - a. All contract provisions contained in this document and future amendments to it;
 - b. The Department’s farmers’ market packet explaining Program Requirements; Materials include, but are not limited to:
 - i. List of foods that are authorized for purchase with S/FMNP checks
 - ii. S/FMNP check redemption and validating procedures
 - iii. Civil rights requirements
 - iv. Complaint process instructions
 - v. List of program violations
 - vi. Sanctions for program violations
 - c. 7 CFR § 248 (WIC FMNP federal regulations);
 - d. 7 CFR § 249 (SFMNP federal regulations);
 - e. Washington Administrative Code (WAC) 246-780; and
 - f. All federal and state laws, policies and procedures.
4. **THE CONTRACTOR SHALL:**
 - a. Assure that the market continues to meet the selection criteria described in WAC 246-780-020.
 - b. Assure that the market meets the expectations of an authorized farmers’ market described in WAC 246-780-022.
 - c. Assure that the market meets the requirements of 7 CFR §§ 248.10 and 249.10 including, but not limited to:
 - i. Assure that growers display the sign required under WAC 246-780-028(1) and distributed by Department in a place where S/FMNP customers can see it.

- ii. Upon request, provide the Department with available information necessary to track the impact of the S/FMNP on the farmers' market. Provide such information as the Department may require for periodic reports to USDA-FNS.
 - iii. Ensure that authorized growers sell only eligible foods in S/FMNP transactions.
 - iv. Ensure growers conducting S/FMNP transactions provide eligible foods at the current price, or less than the current price, charged to other customers.
 - v. Ensure that transactions of S/FMNP checks are valid. To be valid, the S/FMNP check must be:
 - 1. Redeemed by an S/FMNP customer during the valid dates printed on the face of the check;
 - 2. Accepted by an authorized grower;
 - 3. Stamped by the grower or market manager with the identification number assigned by the Department;
 - 4. Deposited or cashed by the grower in a bank or other financial institution by the date identified on the check.
 - vi. Validate, or assist growers with validating, S/FMNP checks using a number stamper. S/FMNP checks must be stamped in the appropriate box on the face of the check with assigned identification numbers.
 - vii. Participate in training or technical assistance on S/FMNP requirements when offered by the Department.
 - viii. Provide in-person training as required by WAC 246-780-022(3). The Contractor must provide in-person training for authorized growers that sell in the market but also separately operate authorized farm stores.
 - ix. Agree to be monitored for compliance with S/FMNP requirements and cooperate with Department during monitoring.
 - x. Be accountable for the actions of growers, grower's employees, and market employees providing S/FMNP food, services, and related activities.
 - xi. Reimburse the Department for any S/FMNP checks transacted in violation of this agreement.
 - xii. Assure that growers and employees give S/FMNP customers the same courtesies as other customers.
 - xiii. Assure civil rights compliance as set forth by 7 CFR §§ 248.7 and 249.7 and state law. Do not discriminate against anyone on the basis of race, color, national origin, sex, age, creed, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
 - xiv. Immediately notify the Department when there is a change in the market manager, the location of the market, or if the market ceases operation prior to the end of the authorization period.
 - xv. Not attempt to collect money from S/FMNP customers for S/FMNP checks not paid by the Department or DSHS.
 - xvi. Ensure that when an S/FMNP transaction is for less than the value of the check, the grower does not give cash as change back to the S/FMNP customers. Contractor should encourage growers to provide extra produce to the customer if the transaction is for less than the value of the check.
 - xvii. Ensure no sales tax is collected on S/FMNP purchases.
- d. Designate an on-site market manager for each market subject to this Contract.

- e. Assure that the market manager is trained in S/FMNP requirements and has access to S/FMNP market management materials provided by the Department.
- f. Before market opening, confirm that all growers who will be accepting S/FMNP checks are authorized and have an identification number assigned by the Department.
- g. Refuse to exchange cash for S/FMNP checks accepted by growers.
- h. Ensure that S/FMNP checks are not used to pay for market fees, or other business costs.
- i. Safeguard and keep confidential any information concerning S/FMNP customers obtained in providing services under this Contract.
- j. Report to the Department any suspected abuse of, or non-compliance with S/FMNP requirements.
- k. Immediately comply with any corrective actions required by the Department, even if the action is subject to appeal.

5. THE DEPARTMENT SHALL:

- a. Operate the S/FMNP in accordance with the requirements and procedures in federal regulations 7 CFR § 248, and 7 CFR § 249, WAC 246-780 and this contract.
- b. Cooperate with DSHS in administration of the SFMNP.
- c. Assign identification numbers to authorized farmers' markets, farm stores, and growers.
- d. Provide market reports to the Contractor listing growers who have signed agreements with the Department.
- e. Provide in-person training to market managers who have not previously participated in the program.
- f. Provide S/FMNP materials to growers and market managers explaining Program Requirements.
- g. Contract with local agencies to distribute WIC FMNP checks to WIC customers. DSHS retains responsibility for distribution of SFMNP checks.
- h. Ensure prompt payment of valid S/FMNP checks that are properly stamped and redeemed.
- i. Monitor authorized farmers' markets, farm stores, and growers for S/FMNP compliance with S/FMNP regulations and this Contract.
- j. Provide technical assistance to farmers' markets, farm stores, and growers on compliance with program rules, regulations and procedures.
- k. Notify farmers' markets, farm stores, and growers of any S/FMNP violations that are subject to sanctions.
- l. Sanction, at the Department's discretion or as otherwise required by law, farmers' markets, farm stores, and growers for violating S/FMNP requirements.

6. NONCOMPLIANCE, ENFORCEMENT AND SANCTIONS

- a. Contractor's failure to comply with the Program Requirements identified in Paragraph 1 may result in contract termination, disqualification, and sanctions as provided under WAC 246-780-040 and as follows.
- b. In addition to the examples of noncompliance listed in WAC 246-780-040(2), noncompliance includes, but is not limited to:
 - i. Assisting an unauthorized grower in accepting S/FMNP checks;
 - ii. Exchanging cash for S/FMNP checks; also known as trafficking;
 - iii. Selling unauthorized food, nonfood items, drugs, alcohol or other items to S/FMNP customers in lieu of or in addition to eligible foods;
 - iv. Charging the S/FMNP customers for foods not received by the customer;

- v. Charging the S/FMNP customer more for authorized foods than other customers are charged for the same food item;
 - vi. Validating and/or redeeming S/FMNP checks without having authorization from the Department;
 - vii. Seeking restitution from S/FMNP customers for S/FMNP checks not paid by the Department; and
 - viii. Accepting and/or validating S/FMNP checks outside of the valid dates printed on the face of the check
- c. Sanctions and/or contract termination for any S/FMNP abuse or violation of S/FMNP Program Requirements is at the Department's discretion.
- d. Consistent with WAC 246-780-040, the violations and the Department's responses are classified as follows:
- i. **CLASS I VIOLATIONS.** The Department shall give a verbal warning for Class I violations, which include:
 - 1. Failure to ensure that all authorized growers are displaying the identification sign.
 - 2. Failure to have a current Market Report on market day.
 - 3. Allowing growers who are not authorized growers to accept S/FMNP checks.
 - 4. Failure to notify the Department when there is a change in the market manager, the location of the market, or if the market ceases operation prior to the end of the authorization period.
 - 5. Having a site manager that has not been trained in S/FMNP regulations.
 - 6. Failure to identify growers selling non-eligible foods or to ensure that growers sell some eligible foods during the market season.
 - 7. Failing to provide documentation requested by the Department.
 - 8. Refusing to validate, or assist growers with validating, S/FMNP checks using a number stamper. S/FMNP checks must be stamped in the appropriate box on the face of the check with assigned identification numbers.
 - 9. Failure to provide in-person training for new S/FMNP growers who have not been previously trained by another market or by Department staff.
 - 10. Allowing a grower to accept S/FMNP checks past October 31.
 - ii. **CLASS II VIOLATIONS.** The Department shall issue a written notice of noncompliance for Class II violations. Class II violations include:
 - 1. Failure to ensure that growers provide eligible foods at the current price, or less than the current price, charged to other customers.
 - 2. Failure to report a grower's abuse of the civil rights of S/FMNP customers.
 - 3. Exchanging cash for S/FMNP checks that growers have accepted.
 - 4. A second failure to correct a Class I violation.
 - 5. Attempting to collect money from S/FMNP customers for S/FMNP checks not paid by the Department.
 - iii. **CLASS III VIOLATIONS.** The Department may suspend or terminate this Contract and may additionally disqualify the Grower from participation in S/FMNP. Class III violations include:
 - 1. Discriminating against an S/FMNP customer on the basis of race, color, national origin, age, gender, or disability.
 - 2. Abusive or hostile treatment of an S/FMNP customer.
 - 3. Failing to allow, comply with, or cooperate in the Department's inspections and monitoring.

4. Failing to provide documentation requested by the Department.
5. A second failure to correct, or a third incidence of, a Class I violation.
6. Failure to correct, or a second incidence of, a Class II violation.
7. Continuing to participate in S/FMNP during a period of suspension or disqualification, which participation may include, but is not limited to, accepting S/FMNP Checks, continuing to display the S/FMNP signs, or other evidence of intent to accept S/FMNP Checks.
- iv. The Department has no obligation to reinstate Contractor's authorization after disqualification. The Contractor must reapply to participate in the S/FMNP.
- v. A Contractor who commits fraud or abuse of the S/FMNP is additionally liable for prosecution under applicable Federal, State and local laws.
- e. The Department shall notify Grower in writing of any adverse action in conformance with WAC 246-780-040(5).

7. APPEALS

- a. Grower may administratively appeal any Department actions that are subject to appeal in conformance with WAC 246-780-060. A request for appeal must conform to WAC 246-780-060(5) and be signed by the protesting party or authorizing agent.
- b. The request must be made in mailed in conformance with WAC 246-780-060(6) and be postmarked within thirty (30) days of the date the Grower received the notice of the adverse action.
- c. The following actions are not subject to administrative appeal:
 - i. Validity or appropriateness of selection criteria;
 - ii. Validity or appropriateness of S/FMNP customer access determinations;
 - iii. Duration or expiration of the Contract
- d. The Adjudicative Service Unit will give the Contractor adequate notice of the scheduled time and location for the hearing.
- e. When the action being appealed is disqualification, the Contractor shall stop validating S/FMNP checks in conformance with WAC 246-780-040(2) for all growers participating in the market effective the date specified in the sanction notice. If the action being appealed is a disqualification of an authorized grower, the Contractor shall cease validating check(s) for the grower who has been notified of the adverse action effective on the date specified in the sanction notice. The Department is not liable for payment of any S/FMNP checks submitted by a grower for payment during a period of suspension or disqualification.

8. **TERMINATION.** Either Party may terminate the Contract for cause or at will upon thirty (30) days notice. Contractor shall send termination notices made by the Contractor to the S/FMNP Coordinator.

9. **ORDER OF PRECEDENCE** In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
- a. Applicable federal and state statutes and regulations
 - b. This contract
 - c. Any other provisions of the contract whether incorporated by reference or otherwise.

10. **ALL WRITINGS CONTAINED IN THIS AGREEMENT.** This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.

11. CONFLICT OF INTEREST. If the Department determines a violation of Chapter 42.52 RCW, the Ethics in Public Service Act, or any similar statute, concerning this Contract, the Department may terminate this Contract and pursue any other remedies available to it at law or under this Contract.

The undersigned affix their signatures in execution of this Agreement,

Farmers' Market Representative Signature

Date

State of Washington Department of Health Signature

Date

Approved as to form February 1, 2013

Janis Snoey, Assistant Attorney General

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

Washington State WIC Nutrition Program does not discriminate.

For persons with disabilities, this document is available on request in other formats.

To submit a request, please call 1-800-841-1410 (TDD/TTY 1-800-833-6388).

